IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No 137 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DHARNENDRA AGRO FOOD IND. LTD.

Versus

GUJARAT SMALL INDUSTRIES CORP.LTD.

Appearance:

1. COMPANY APPLICATION No. 137 of 2003

SINGHI & CO for Petitioner No. 1

MR AC GANDHI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 19/02/2004

ORAL JUDGEMENT

Heard Mr.Bijal Chatrapati and Mr.A C Gandhi, the learned advocates appearing on behalf of the applicant - Company and the respondent respectively.

2. The undisputed facts are that the respondent sanctioned financial assistance to the tune of Rs.1,95,00,000/- (Rupees One Crore and Ninety Five Lakhs Only) to the applicant, out of which a sum of Rs.88,72,900/- (Rupees Eighty Eight Lakhs Seventy Two Thousand Nine Hundred Only) was disbursed by way of Letter of Credit, repayable within 90 days from the date of issuance. Failure of the applicant to repay the amount within the stipulated time resulted in the respondent issuing statutory Notice under Sections 433 and 434 of the Companies Act, 1956. Company Petition No.19/2000 came to be filed by the respondent for an amount of Rs.1,32,54,852/- (Rupees One Crore Thirty Two Lakhs Fifty Four Thousand Eight Hundred and Fifty Two Only) as being due and payable on 31/12/1999. This amount was without interest which according to the respondent was chargeable @ 27% plus penal interest @ 3% per annum.

3. In the meantime, under the provisions of the Gujarat Public Moneys (Recovery of Dues) Act, 1979 read with the provisions of The Bombay Land Revenue Code, Notice came to be issued on 16/12/2002 by the Mamlatdar Recovery to the applicant. It appears that the said Notice was challenged by the applicant by preferring Civil Suit No.4108/2002 which is stated to be pending and no injunction is operating in favour of the applicant. Thereafter, the Mamlatdar Recovery issued identical Notice on 07/03/2003 which is annexed at Annexure 'B'.

4. Thereafter, the present application came to be preferred seeking directions to restrain the respondent from proceeding further in pursuance of the said Notice dated 07/03/2003. On 28/03/2003, this Court granted conditional ad-interim relief, subject to the applicant making payment of Rs.3,00,000/- (Rupees Three Lakhs Only) to the respondent. It is not in dispute that the said payment was made by the applicant, though belated. It appears, thereafter, in April, 2003 one time settlement scheme was worked out between the parties under which the rate of interest was reduced to simple interest @ 10% and the applicant was required to make payment of Rs.56,74,534/- (Rupees Fifty Six Lakhs Seventy Four Thousand Five Hundred and Thirty Four Only) in twenty four equal monthly installments, as against outstanding sum of Rs.116.60 Lakhs as per Ledger Account in the books of the respondent. There is no dispute in relation to this balance. As per the aforesaid settlement scheme between the parties commencing from 05/07/2003 and ending in October, 2003, the applicant was required to make payment of five monthly installments, each installment

being of Rs.2,07,000/- (Rupees Two Lakhs and Seven Thousand Only). As against that, the applicant has made payment of Rs.1,00,000/- (Rupees One Lakh Only).

5. In light of the aforesaid fact situation, it is apparent that despite availing time, the applicant has not been able to meet with its commitment. In these circumstances, it is not possible to accept the prayer of the applicant for restraining the respondent from proceeding further, in pursuance of Notice dated 07/03/2003. In the result, the application stands rejected. Notice discharged. Ad-interim relief granted earlier stands vacated.

(D. A. Mehta, J.)
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